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in the Supreme Court of the United States

_____ TERM, 1973

NO. 73-251

JOHN JAMES MEILY, JR.,
Petitioner,

vs.

AGRICULTURAL INVESTMENT CORPORATION, S.A., a Panamanian company, and FIRST NATIONAL INVESTMENT CORPORATION, S.A., a Luxembourg company, and AGRI INTERNATIONAL, S.A., a Panamanian company,
Respondents,

On Petition For Writ of Certiorari To the District Court of Appeal of Florida, Third District

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

PREFACE

The following symbols will be used:

R	for	Record
P	for	Petition for Certiorari
PA	for	Petitioner's Appendix

All emphasis will be ours unless otherwise indicated.

JURISDICTION

It is respectfully contended by Respondents that Petitioner erroneously seeks to invoke the jurisdiction of this Court under 28 U.S.C. Section 1257(3) inasmuch as no title, right, privilege or immunity of the Petitioner has been denied, abridged or drawn in question. As will be demonstrated *infra,* Petitioner has by express contract, as well as by his calculated conduct, waived all rights and privileges of access to American Courts where more convenient forums exist.

QUESTION PRESENTED

WHETHER DISMISSAL OF THE COMPLAINT BY A FLORIDA COURT FOR FORUM NON CONVENIENS VIOLATES THE PRIVILEGES, IMMUNITIES OR DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION WHERE 1) PLAINTIFF, A UNITED STATES CITIZEN, RESIDING IN ENGLAND; 2) ENTERED INTO AN EMPLOYMENT CONTRACT IN WEST GERMANY WITH 3) A PANAMANIAN CORPORATION AND A LUXEMBOURG COMPANY; 4) TO BE PERFORMED IN ENGLAND AND 5) INTERPRETED IN ACCORDANCE WITH PANAMANIAN LAW AND 6) PROVIDED FOR SUBMISSION OF ALL DISPUTES TO ENGLISH ARBITRATION?

STATEMENT

It is to be noted that Petitioner does not support his "Statement" with a single Record reference (P4-11), as required by Supreme Court Rule 23(f). Said statement is seriously misleading for the following reasons:

1. Nowhere does Petitioner state that at the time of the dismissal of the complaint on 4 August 1971, the only affidavit in opposition to the two affidavits relied on by Respondents was the affidavit of Petitioner's attorney attaching the Articles of Incorporation of AGRI and an amendment thereto. (R117-127) Thereafter on 27 August 1971 Petitioner filed his Motion to Vacate Order of Dismissal (R62) attaching thereto the affidavits of three foreign employees of respondents, all executed in London, England. (R64-70) Respondents' counsel also filed his second affidavit attaching certain other documentary evidence including a post card, two articles of the London Daily Express, an original brochure entitled "Agri Fund" and two certificates of the Assistant Registrar of Companies in London, England. (R71-72) The court refused to vacate its order based on the "newly discovered evidence." (R55)

2. Significant facts are omitted, to-wit:

a) Petitioner was a resident of Munich, West Germany, at the time of the contract herein (R173) and is currently a resident of London, England.

b) Said contract was entered into in West Germany and was to be performed in London, England. (R173)

c) None of the provisions of said contract contemplated the performance of any act in the United States. (R169-173)

d) In addition said contract contained the following provisions involving foreign countries:

I a) AICSA shall deposit in a special escrow account with the Union Banque Suisse (UBS), Zurich, Switzerland, the sum of 100,000 (One Hundred Thousand) dollars, or a Performance Bond for that amount, ... " (R170, 4-a)

II "b) AICSA shall deposit on or before 30 April 1970 in a special escrow account set up for that purpose with the Union Banque Suisse (UBS), Zurich, Switzerland, ... " (R170, 5-b)

III "In the event of pre-mature termination for "Just Cause", and in order to determine whether or not "Just Cause" did, indeed exist, the matter shall be submitted to arbitration in London, England.." (R171, 6-b)

IV "7. *Interpretation of Law:*

a) It is agreed that this contract will be interpreted in accord with Panamanian law.

b) However, it is further agreed that any dispute will be settled in accord with

Para 6-b above and that the offending party will comply with any and all such decisions forthcoming from the Arbitration Committee." (R172)

V "10. *Moving of Household Furnishings:* AICSA agrees to pay all expenses connected with the packing, unpacking, transportation and insurance of Mr. Meily's household furnishings and personal belongings from Munich, West Germany, to London, England." (R173)

VI "11. *Personal Transportation:* AICSA agrees to pay for all transportation costs of Mr. Meily's family, consisting of Mr. Meily, his wife and his son, from Munich, West Germany to London, England." (R173)

e) The telegram terminating Meily's employment emanated from London and was delivered to Meily there. (R148)

f) The two form letters referred to at PB-7 clearly indicate that the business of both AICSA and AGRI was being conducted from offices located at 44 Green Street, London, W.I. England at the time of the alleged breach of contract. (R143-145) Further the letter of February 3, 1971, indicates that all monies comprising accounts receivable were received in England.

"Due to the present Post Office strike in England, it is possible that payments

made by you after January 1, 1971, have not been received or credited to your account. These payments will not, then, be reflected in the net value computation noted above. Please be assured that all payments held up by this strike will be credited to your account in full, with no deduction for interest, and the net value of your Certificate will be adjusted upward accordingly." (R146)

g) AGRI's domicile is the City of Panama and its resident agent is the legal firm of Franco & Franco, 33 A-34 Avenida Cuba, Panama Five, Republic of Panama, Post Office Box 7283. (R134)

h) The directors named in the Articles of Incorporation dated August 10, 1970, include Petitioner Meily and Alfred Landin domiciled at 11A Prince Henri, Luxembourg. (R134)

i) The minutes of AGRI shareholders dated January 25, 1971, held in Miami, Florida, state:

> "The President informed the Shareholders that the object of the meeting is to facilitate the opening of an office of AGRI INTERNATIONAL, S.A. in the Republic of Panama. The purpose of said offices being to provide service and information as necessary to serve clients of Latin America. — To conform with the requirements of Panamanian Law all of the existing officers hereby resign." (R162)

j) The London Daily Express stories of May 6 and July 27, 1971, list the office of AICSA as Green Street in London, in Panama City, Panama, and in Florida. Said newspaper articles also mention that the principal operator of these businesses is Edward Jules Markus, a Canadian citizen who commutes between his Mayfair office penthouse and his Miami hotel suite. (R73)

k) AGRI is listed as a British company and Edward Jules Markus, a director, is listed as a British subject. (R90)

1) The brochure of AICSA contains the following:

A. *"What is Agricultural Investment Corporation S.A.?*
Agricultural Investment Corporation S.A., which founded Agri-Fund and is responsible for the management of Agri-Fund is incorporated in the Republic of Panama as a publically owned corporation having a paid capital of US $10,000,000.00.

* * * *

"The address of the Management Corporation is: Agricultural Investment Corp. S.A., Avenida Cuba 33 A-34, Panama 5, Republic of Panama." (R93)

B. "The net asset value of the fund and per share will be determined by or under the supervision of the Management Company and Fiduciaire Generale de Luxenbourg.

* * * *

"*Sponsor's and Sales Agent's Fees*
First National Investment Corp. S.A. 11 A, Blvd. Prince Henri, Luxenbourg, has been appointed by the Management Company to act as sales agents in the offering of the shares of Agri-Fund." (R107)

C. "*Registration of Shares*
Fiduciaire Generale de Luxenbourg, 13 Blvd. de la Foire, Luxenbourg, shall act as registrar for the shares of Agri-Fund." (R108)

D. "*Custodian and Trustee*
Agricultural Investment Corporation S.A. has appointed Fiduciare Guaranty International S.A., Avenida 5, No. 33 A — 34, Edificio de la Cia. General de Seguros, Apto. 22, Panama 5, Republic de Panama, as a custodian and trustee for the holdings and assets of the investors in Agri-Fund." (R108)

E. "This enables all investors to remit checks or money orders payable to First National Investments Corpora-

tion S.A., and receive immediate credit toward their account. All cheques, bank drafts and money orders should be made payable to First National Investment Corporation A.A. 11 A, Boulevard Prince Henri, Luxenbourg Grand-Duchy of Luxembourg." (R108)

F. *"Auditors*
Auditors for Agricultural Investment Corporation S.A. are Aragon & Asociados, Avenida 5A, No. 33A-34, Panama, whose staff is comprised of the finest accounting experts in Panama." (R108)

G. *"Legal Opinions*
Legal opinions in connection with Agricultural Investment Corp. S.A. and Agri-Fund will be passed upon by FRANCO & FRANCO, Attorneys P.O. Box 7283, Panama 5, Panama. Local offices and agencies of First National Investment Corp. S.A. will employ legal counsel with respect to the laws and legal requirements of each particular locality." (R109)

m) With the exception of two affidavits filed by Meily's Florida counsel, all affidavits filed by Petitioner have been executed in London, England or West Germany. (R64,67,69)

n) The affidavit of Henry Wallace Chmielewsky executed in England is based entirely on hearsay, utilizing such language as "based on what Edward Jules Markus told me ... "; "I was informed by ... "; "I was always given to understand .. "; "I was always given to believe ... "; "I was always under the impression ... "; "In my opinion ... "; and etc. Such evidence is incompetent and immaterial. (R64-66)

o) The affidavit of Samir Y Khatib, a citizen of Jordan residing in London, is similarly incompetent and irrelevant, containing largely hearsay testimony such as "I was told ... "; "I was also told ... "; "I was given to understand ... "; and etc. (R67-68)

p) The affidavit of Dr. Helmuth Jahns, a citizen of West Germany, merely stated that in November of 1970, to the best of his knowledge AICSA had offices in Miami, but that as of August 1971 he did not know if AICSA was "presently maintaining offices in Miami, Florida." (R69-70)

q) Petitioner never obtained service on First National Investment Corporation, S.A., a Luxembourg corporation, a named defendant, who is one of the parties to the contract.

REASONS FOR NOT GRANTING THE WRIT

1. In pressing this Court to accept jurisdiction on the basis that as a United States citizen residing outside the United States, he has been denied access to the courts of Florida, Petitioner unfairly ignores his own conduct in assiduously and expressly avoiding all contact with the United States in order to carry on an "off shore" mutual fund enterprise. It is too well established to require citation that a person may waive any right, immunity or privilege granted to him by his government by his own conduct. When Petitioner, himself an integral part of the foreign corporations he now seeks to sue in Florida, contracted to avoid all contact with the United States, he obviously waived any absolute right to sue in any American Court he deemed appropriate. *Cuba R. Co. v. Crosby*, 222 U.S. 473, 480; 32 S. Ct. 132,133, 56 L.Ed. 274. International mobility is one thing (P12), waiver of privileges and immunities quite another. The contract itself could have assured the parties' right to seek redress in American courts, but such a provision would have defeated the parties' intention to avoid all United States contacts.

2. Moreover, the federal courts have quite clearly closed their doors to American citizens with foreign domiciles in many instances. Florida should not be held to a different standard under the facts of this case where Petitioner has access to many other forums. It is universally held that plaintiff may be a citizen of the United States, yet if he is not domiciled in any state he may not sue in a federal court under diversity of citizenship because he would not be a resident of any

state, E.g., in *Clapp v. Stearns & Co.* (E.D.N.Y. 1964) 229 F.Supp. 305 the court stated:

> ... "An averment of residence is not the equivalent of an averment of citizenship for the purposes of jurisdiction in the courts of the United States". Everhart v. Huntsville Female College, 120 U.S. 223,224, 7 S.Ct. 555, 3 L.Ed. 623 (1887). For all that appears, plaintiff may be a citizen of the United States with a domicile in Nassau. If so he may not sue in a Federal Court under diversity of citizenship jurisdiction because he would not be a citizen of any state. Pemberton v. Colonna, 290 F.2d 220 (3rd Cir. 1961); McClanahan v. Galloway, 127 F.Supp. 929 (N.D.Cal. 1955): Alla v. Kornfieldl, 84 F.Supp. 823 (N.D.Ill. 1949); Cowell v. Ducas, 2 F.Supp. 1 (S.D.N.Y. 1932); Hammerstein v. Lyne, 200 F. 165 (W.D. Mo. 1912); 1 Barron and Holtzoff, Federal Practice & Procedure 138 (Wright ed. 1960). The second and third counts in the complaint must be dismissed for lack of jurisdiction.

3. Jurisdiction of this Court is not justified herein. Petitioner did not properly raise or perserve the constitutional issues herein.

4. None of the cases cited by Petitioner are even remotely analagous to the facts now before this Court: E.g. *Boddie v. Connecticut*, 401 U.S. 371 (1971) (P12) deals with right of female welfare recipients to bring divorce suits where they are unable to pay court fees and costs; *Swift & Co. Packers v. Compania Colombiana*, 339 U.S. 684-698, concerns the right of an

American Company to a foreign attachment of a vessel pursuant to a libel in personam.

ARGUMENT

The well-settled law of Florida is stated in *Adams v. Seaboard Coast Line Railroad Company,* (Fla. App. 1st 1969) 224 So. 2d 797, 800:

> "...(I)f a transitory action is filed in a court of Florida between nonresident parties seeking to litigate a cause of action accruing in a foreign jurisdiction, the trial court is accorded a sound discretion in determining whether it should retain jurisdiction of the action, or dismiss it without prejudice to the right of the plaintiff to reinstitute the action in a more appropriate and convenient forum."

Petitioner's encyclopedic treatment of the law cannot alter the facts of his case. He voluntarily entered into a contract which provided a more appropriate and convenient forum to litigate in. (R171)

A. *At least two other appropriate forums are available to Petitioner.*

Meily's own evidence reveals that there are at least two other more appropriate forums available to him. Significantly the affidavits relied on by Petitioner were all executed in England. The most obvious choice is England where both Meily and one of Respondents' main officers, Edward Jules Markus, reside and where both corporations are engaged in business. The second obvious forum is Panama, where both Respondents

were incorporated and are domiciled (R92,134) and where there is a resident agent to accept service. (R120,135) None of the affidavits of Respondents' foreign employees nor Petitioner's attorney contradict these significant factors. (R64,70) Nowhere does Petitioner state that Florida is the only forum to which he has access. (R162,168)

Moreover, while Petitioner may be an American citizen (albeit never a Florida resident) his own evidence reveals that he has chosen not to reside in the United States for many years. (R169) The contract upon which Meily brings suit deliberately avoided all responsibility for compliance with Florida law[1], American law, or liability for Florida or United States taxes. (R169,173) It is to be assumed that Mr. Meily, a sophisticated businessman, who has always been either a director, an incorporator, or both of all Respondent corporations (R100,130,134) entered into his foreign contract with full knowledge and awareness that his judicial recourse would correctly be limited to foreign courts.

Indeed, bringing suit in Florida under these facts can be nothing more than astute forum shopping.

The trial court correctly exercised its discretion in dismissing the cause herein on the basis of forum non conveniens. *Southern Railway Company v. McCubbins,* (Fla. App. 1967) 196 So. 2d 512; *Faulkner v. S.A. Empresa de Viaco Airea Rio Grand,* (Fla. App. 3rd 1969) 222 So. 2d 805.

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[1]Obviously, these corporations do not wish to be required to comply with the provisions of the Florida or United States laws governing the regulation of the sale of securities.

B. *AICSA is not a Florida resident.*

For purposes of this brief, Respondents assume *arguendo* that AICSA is doing business in Florida and was properly amenable to service of process. But that is not the test determining the applicability of the forum non conveniens doctrine. It is apodictic that "The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even if jurisdiction is authorized by the letter of the general venue statue." *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 507.

Thus, a corporation may be doing business in Florida and may be subject to the jurisdiction of the Florida courts without being a Florida resident. *Southern Railway Company v. McCubbins, supra.* At the hearing, Respondents relied on the affidavit of AICSA's director, Edward Walterman who unequivocally stated that AICSA was a Panamanian corporation with primary offices in London, England, and that the corporation does not presently have an office, a telephone, mailing address or any agents or employees within the State of Florida (R150)

Those statements were not contradicted by any substantial competent evidence. The trial court obviously was unimpressed by the vague, equivocal, hearsay statement contained in the affidavits of AICSA's foreign employees, executed in London, and filed as "newly discovered evidence" (R54) after the court's dismissal of the complaint. Moreover, all of the Petitioner's own documentary evidence negates his argument that AICSA is a Florida resident, e.g., the brochures, (R91 et seq.) letters (R143,145) and newspaper clippings.

Before the Florida Supreme Court, Petitioner relied on *Adams v. Seaboard Coast Line Railroad Company, supra,* to establish conflict jurisdiction. But *Adams* was so dissimilar factually that it was inapposite and after tentatively accepting jurisdiction the Florida Supreme Court found no conflict and discharged the writ. (PA F) In *Adams,* a Georgia resident sued a railroad company, a Virginia corporation, whose official headquarters and principal place of business was Florida, during the entire time of suit. That case involved an FELA action accruing at Waycross, Georgia. The trial court's dismissal for forum non conveniens was reversed on the basis that the defendant could not complain about being sued at the place of its official residence which residence was only 75 miles from the site of the accident involved. (224 So. 2d 801) The situs for the contract in dispute herein is not in an adjacent state, but in a foreign nation, thousands of miles away. In the present case Petitioner is an English resident, suing on his contract with two Panamanian corporations. That contract was executed and performed in England, and none of the foreign corporations now maintain any Florida offices or employ any agents in Florida.

AICSA is not a Florida resident.

C. *AICSA, a Panamian Corporation, did not waive its right to dismissal of a complaint for forum non conveniens under the facts herein.*

Petitioner bottoms all of its arguments on a statement completely unsupported by the record — that AICSA's principal place of business is Florida. Neither

Petitioner's argument nor its evidence convinced the trial court that the proper forum for this suit between non-residents based upon a contract and facts totally unrelated to Florida activities was Florida.

D. *There was competent, substantial evidence before the trial court to support its exercise of discretion in dismissing the complaint for forum non conveniens.*

Petitioner cannot deny that the *sine qua non* of this appeal is whether in fact the trial court abused its discretion. The criteria set forth, first by the Florida Supreme Court in *Hagen v. Viney,* 124 Fla. 747, 169 So. 391 (1936) and summarized by the court in *Adams, supra,* are:

> "In the exercise of such discretion, the trial court may consider whether the filing of the action constitutes forum shopping on the part of the plaintiff; whether it constitutes undue harassment of the defendant by requiring him to litigate the action in a forum remote from where it accrued or where the defendant resides or maintains a place of business; and, whether the convenience of the parties and witnesses, in the interest of justice, requires the action be litigated in a different forum. In the ultimate, however, it is seen that the application of the doctrine of forum non conveniens is restricted to the limited category of cases in which both parties to the action are non-residents, and the case of action sued upon arose in a jurisdiction outside of Florida." (224 So. 2d 800,801)

The "ultimate" referred to above are all present here — all parties are non-residents of Florida and of the United States for that matter and the cause of action sued upon arose outside of Florida and the United States.

Gulf Oil Corporation v. Gilbert, supra, dramatizes the weaknesses of Petitioner's position and strongly supports Respondents. Gilbert, a Virginia resident, sued Gulf Oil, a Pennsylvania corporation qualified to do business in both Virginia and New York, in a New York federal court for causing a fire and explosion in Gilbert's Virginia warehouse. The trial court dismissed the complaint for forum non conveniens, ruling that Virginia was a more appropriate forum. The Second Circuit Court of Appeals *reversed.* On certiorari, the United States Supreme Court in turn *reversed* the Circuit Court of Appeals, thus reinstating the trial court's dismissal, stating:

> "We are convinced that the District Court did not exceed its powers or the bounds of its discretion in dismissing plaintiff's complaint and remitting him to the courts of his own community. The Circuit Court of Appeals took too restrictive a view of the doctrine as approved by this Court. Its judgment is reversed." (330 U.S. 512)

Gulf Oil specifies the very elements so significant in this case; to wit: "relative ease of access to sources of proof, availability and cost of compulsory process of unwilling witnesses, etc."

Similarly, other cases cited by Petitioners likewise support Respondents' position — either by the express

language therein or the vastly disparate facts. In *The Saudedes*, 67 F. Supp. 820, a Pennsylvania court refused to apply the forum non conveniens doctrine in a suit between two American citizens apparently doing business as a partnership domiciled in Pennsylvania, against two Portuguese shipping companies for a shortage in a tuna fish shipment transported to New York. (P15) No language in that case negates the application of that doctrine under appropriate circumstances such as are now before the court. Here the suit is between non-United States residents in a cause of action accruing entirely outside the United States.

Indeed, Meily is a nonresident American citizen whose contract with two foreign corporations, of which he was an integral part, carefully avoided all necessity for compliance with American law and taxes. Meily was willing to reap the benefits of such an arrangement, but now complains because he may find himself compelled to litigate in the forums of those very countries where he was content to live and work. See *Cuba R. v. Crosby*, 222 U.S. 473.

In *Latimer v. S.A. Industrias Reunidas F. Mattarazzo*, (S.D.N.Y. 1950) 92 Supp. 469, relied on by Petitioner at pages 14, 17, 18, 19, 20, 21, plaintiff was a United States citizen whose foreign employment contract was terminated while plaintiff *was in the United States* and the Brazilian Company was actively engaged in business in the forum at time of suit, facts totally different from those here involved. Significantly the *Latimer* court cited freely from *Gulf Oil, supra.* (P15)

Finally, Petitioner cites *Burt v. Isthmus Development Company*, (5th Cir. 1955) 218 F. 2d 353, an action

brought in a Texas federal court by a New York citizen for recovery of equipment and damages against a corporation domiciled in Texas. Defendant moved to dismiss on ground that the action should be in Mexico because Mexican law was involved. The trial court dismissed for forum non conveniens and the Fifth Circuit reversed, against facts totally dissimilar from the present case. Significantly, the court in *Burt* stressed the American *residency* of the United States citizen and the fact that the corporation was being sued at its domicile. (P14, 15, 16)

Where the facts of this case are present, (i.e.) none of the parties are residents of the State of Florida, the contract involved deliberately avoided any contact with the United States and the Petitioner was an integral part of the foreign Respondent corporations, the case of *De Sairigne v. Gould,* (S.D.N.Y. 1949) 83 F. Supp. 270, is most apposite in its holding and quotation of Mr. Justice Holmes in *Cuba R. Co., supra:*

> "Nor does even an American citizen have an absolute right, under all circumstances, to sue in an American court. U.S. Merchants' & Shippers' Ins. Co. v. A/S Den Norske Afrika Og Australie Line, 2 Cir., 65 F. 2d 392. As Mr. Justice Holmes said in Cuba R. Co. v. Crosby, 22 U.S. 473, 480, 32 S. Ct. 132, 133, 56 L. Ed. 274, 38 L.R.A., N.S., 40:
>
> 'But it should be remembered that parties do not enter into civil relations in foreign jurisdictions in reliance upon our courts. They could not complain if our courts refused to meddle with their affairs, and remitted them to the

place that established and would enforce their rights.' "

The trial court correctly exercised its discretion in dismissing the complaint for forum non conveniens. See *Gulf Oil Corp. v. Gilbert, supra.*

E. *No constitutional rights of Petitioner have been abridged by dismissal of his complaint.*

In his constitutional arguments, Petitioner glosses over controlling factors; He is not a Florida citizen nor a Florida resident; he is not presently residing anywhere in the United States. None of the Respondent corporations are Florida residents nor American citizens, the cause of action accrued entirely without the United States, and this suit is in the Florida courts. Clearly, here as in *Gulf Oil Corp., supra,* there is no constitutional issue.

In *Gulf Oil Corp.,* the United States Supreme Court disposed of the agrument that constitutional considerations preclude application of the doctrine of forum non conveniens:

"We later expressly said that a state court 'may in appropriate cases apply the doctrine of forum non conveniens.' Broderick v. Rosner, 294 U.S. 629, 643, 79 L. Ed. 1100, 1107, 55 S. Ct. 589, 100 ALR 1133, Williams v. North Carolina, 317 U.S. 287, 294, note 5, L. Ed. 279, 283, 63 S. Ct. 207, 143 ALR 1273. Even where federal rights binding on state courts under the Constitution are sought to be adjudged, this Court has sustained state courts in a refusal to

> entertain a litigation between a non-resident and a foreign corporation or between two foreign corporations. Douglas v. New York, N.H. & H.R. Co., 279 U.S. 377, 73 L. Ed. 747, 49 S. Ct. 355; Anglo-American Provision Co. v. Davis Provision Co., 191 U.S. 373, 48 L. Ed. 225, 24 S. Ct. 92." (330 U.S. 504)

Petitioner's injection of constitutional "issues" do not even remotely apply to the facts at hand. In the Petitioner much is made of relegating "that citizen to the courts of a foreign country." (P11, 15) However, it is not the trial court nor the District Court of Appeals nor the Florida Supreme Court who are responsible for the propriety and necessity of Petitioner litigating in a foreign court. Rather, it was the result of carefully calculated steps taken by businessman Meily, as well as a matter of express contract. If under the facts herein, Petitioner had any absolute right of access to the courts of Florida (which we vehemently deny) he expressly waived it by his own conduct.

CONCLUSION

It is respectfully submitted that in the proceedings below, no right, privilege or immunity of the Petitioner has been denied, abridged or drawn in question so as to invoke the jurisdiction of this Court under 28 U.S.C. 1257(3). Inasmuch as Petitioner has not been improperly denied the benefit of the privileges, immunities and due process clauses of the Fourteenth Amendment of the United States Constitution, his Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing Brief for the Respondents in Opposition was furnished by mail this 30th day of August, 1973, to: HELLIWELL, MELROSE & DeWOLF, Attorneys for Petitioner, 600 Brickell Avenue, Miami, Florida 33131.

By _____